



December 01, 2021

Delivery via First-Class Mail (USPS)

The Honorable Margo K. Brodie  
The Honorable Raymond J. Dearie  
United States District Court  
225 Cadman Plaza East  
Brooklyn, NY 11201

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ DEC 06 2021 ★  
BROOKLYN OFFICE

re: United States v. Andre Wilburn, Case No. 19-CR-108 (MKB)

re: United States v. Andre Wilburn, case No. 19-CR-139 (RJD)

Motion for Release

Dear Chief Judge Brodie and Judge Dearie:

Please construe this letter as a formal motion. The defendant, Andre Wilburn, without waiving any other motions, and to be considered in addition to and in connection with any previously submitted motions, respectfully moves the Court to grant him relief from the prejudicial conditions at Metropolitan Detention Center Brooklyn ("MDC Brooklyn"), by releasing him on bail subject to the least restrictive conditions pursuant to Title 18 Section 3164 of the United States Code. As a basis, the defendant sets forth the following:

Title 18 USC section 3164 stipulates "automatic review by the court of the conditions of release, "if trial is not commenced within 90 (ninety) days of arrest. 18 USC 3161(c).

On January 15, 2019, the defendant was arrested on charges in the case before Judge Brodie ("the 108 case"). The defendant was subsequently detained for 1,077 days "solely because he is awaiting trial," 3164(a)(1), offending 18 USC 3164 by 987 days. Over 460 days are attributed to unauthorized, therefore nonexcludable, continuances initiated by former counsel, James Darrow. The remaining 608 days are "ends of justice"





continuances granted sua sponte. It should be noted that as of the date of this letter-motion, there is still no trial date set for this case, exacerbating the unusual and extraordinary detention with each passing day.

Since February 15, 2019, the defendant has also been detained in the case before Judge Dearie ("the 139 case"). The defendant has remained detained, incarcerated at MDC Brooklyn, for 904 days and counting in the 139 case. On April 26, 2019, the court granted a 91 day sua sponte continuance, offending the precepts of 18 USC 3164(c), 18 USC 3161(c)(1) and *Zedner v. United States* 547 US 489 (2006). The defendant contends that the total duration of 904 days nonexcludable is attributed to the fact that Judge Dearie has not yet accepted the plea of guilty. *United States v. Roberts* 515 F.2d 642 (2d Cir 1975) (The speedy trial clause applies with full force at least until a guilty plea has been entered by the defendant and accepted by the court.) The conjunctive "and" is used, meaning that the defendant merely entering the plea is not enough to waive speedy trial rights without the Court formally accepting the plea on record. *United States v. Loe*, 586 F.2d 1015 (4th Cir 1978) (Failure to commence trial within the prescribed period must result in automatic release of detainee if delay is through no fault of accused or his counsel.) *United States v. Ormon*, 417 F. Supp. 1126 (D. Colo 1976) (Under clear language of 18 USC 3164, reason for delay is irrelevant, so long as it is not occasioned by accused or his counsel...)

Based on the foregoing, the defendant seeks immediate release from custody at MDC Brooklyn, pursuant to 18 USC 3164 for both the 108 case and the 139 case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed and dropped in

the prison Special Mail box on December 01, 2021.

Respectfully submitted,

*Andre Wilburn*

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